

## Judges may take bigger role guiding pro se

Recognizing rise in pro se litigants, D.C. judges are taking action.

**Zoe Tillman**

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Facing eviction from her Northeast Washington home, Vilma Beverly showed up to court ready to fight, even though she had no plan of attack.

Hiring a lawyer had never been an option. Too expensive, Beverly, 57, said. She had the money to pay her rent, but didn't know how to approach her landlord's attorney or the court to explain.

A last-minute negotiation between an attorney drafted to help Beverly and her landlord's counsel on Sept. 22 saved her. But according to judges and legal services providers, her story is all too familiar: Budget cuts have made it harder to help the growing number of people who are coming to D.C. Superior Court without a lawyer.

Help is on the way. Noting the rise in pro se litigants, and acknowledging that traditional legal services groups can't always meet those needs, the court is considering changes to its judicial conduct guidelines that would encourage judges to take a more "affirmative role" in ensuring that unrepresented parties understand what's going on.

The change would place Washington among jurisdictions around the country that are "in the lead" in responding to the needs of pro se litigants, said Richard Zorza, a local solo practitioner and the coordinator of the national Self-Represented Litigation Network.

"Many judges approach self-represented litigants with some, shall we say, anxiety," Zorza said. The proposed changes to the judicial code, he added, represent "the best and most comprehensive capture of the way people are thinking about this all over the place."

It's too early to tell whether the new language would change judicial behavior since, as Superior Court Chief Judge Lee Satterfield acknowledges, judges exercise independence in how they run their courtrooms. Still, he said, he is optimistic that the

new code will give necessary guidance to judges who might be unsure about what they can say or do.

"Being mindful of our role as neutral arbiters, we also have to recognize that we're responsible for fairness and justice as well," Satterfield said.

## **STEADILY RISING**

The Sixth Amendment guarantees a lawyer for criminal defendants, but no such right exists in civil cases. Defendants are more likely to go pro se than those filing complaints, but parties on both sides of the courtroom are often unrepresented in the Superior Court's highest-volume civil divisions, including landlord and tenant, small claims and Family Court.

Superior Court doesn't track pro se litigants annually, but available data from the court shows that the proportion of pro se litigants in civil cases has been consistently high — and that the overall number of such litigants has been rising steadily.

Between 2005 and 2009, for instance, the percentage of respondents making an initial court appearance without counsel in landlord and tenant cases stayed the same, around 97 percent. In the Small Claims Division, about 97% of respondents also went pro se in 2005 and 2009.

While the proportion of pro se litigants stayed the same, judges and attorneys on the ground agree that the number of unrepresented parties is going up, keeping pace with growing dockets. Between 2006 and 2009, the last year for which data is available, the total number of respondents in Superior Court civil cases, excluding tax liens, increased by about 400 people, from 12,359 to 12,764. The number of pro se respondents, who made up about half of all defendants, also went up by about 400 people.

The consensus is that the numbers have continued to rise in the years since. Eric Angel, executive director of the Legal Aid Society of the District of Columbia, said that "we have every reason to believe that, if anything, things have gotten worse with respect to the number of unrepresented litigants."

Angel places much of the blame on the economic downturn. Since 2007, U.S. Census Bureau data show that Washington's poverty rate has grown at a steady annual clip, from a decade-low of 16% in 2007 to 19% in 2010. Higher poverty means more debt collection, unpaid rent and other small claims cases, he said.

The recession has also left more moderate-income families, who might have been able to afford a lawyer before, unable to hire counsel. The growing need, combined with cuts to legal services budgets, has put more people in the position of attempting to navigate often-complicated civil cases alone.

Georgetown University Law Center Professor Peter Edelman, who chairs the District of Columbia Access to Justice Commission, said Superior Court "is one of the most responsive in the country" in trying to meet the needs of unrepresented litigants. The court runs one legal resource center in Family Court, but gives space and support to programs run by the D.C. Bar Pro Bono Program and other providers. Through those programs, Edelman said, "we've actually made some progress."

Pro Bono Program Associate Director Mark Herzog said that in the last three years, the number of clients coming to their resource centers has gone up, from about 5,000 clients to 7,200 clients annually. The program runs in-court resource centers in landlord and tenant, consumer law, probate and tax sale divisions. The program also runs free clinics on divorce and custody proceedings.

Stacey Barlow-Green, 49, a retired teacher, considered hiring a lawyer after she was sued by her landlord for refusing to pay rent. She said she withheld rent because of a rodent infestation and other housing code violations, so she visited the Landlord Tenant Resource Center on Sept. 22 for advice on how to defend her case.

Hiring a lawyer was too costly, but she said a resource center attorney explained her options and she felt confident she could handle it on her own. "I know I have rights," she said. "I'm not flying blind."

On busier days, Herzog said his group sometimes has to turn away cases like Barlow-Green's in order to help clients at immediate risk of eviction.

Another strategy is utilizing programs that "unbundle" services, meaning attorneys represent an otherwise pro se litigant for a single hearing or meeting. Temporary appearances for unrepresented parties have been allowed in landlord and tenant cases since 2007 and in May, the court authorized temporary appearances in the Paternity and Child Support Branch of Family Court, a high-volume division.

Legal Aid and local nonprofit group Bread for the City now make attorneys available for same-day representation in that division several days a week. Resources are still limited, though, Angel said, and budget cuts facing legal services providers citywide make it hard to increase staffing for successful programs, even with part-time pro bono help from private firms. "Every day we have to triage away people who we would like to represent," he said.

## **CHANGING THE CODE**

New language proposed for the Code of Judicial Conduct could help in ways that outside resources can't.

D.C.'s Joint Committee on Judicial Administration is considering a new version of the code for the first time since 1995. Although much of the proposed text closely follows a

model code released by the American Bar Association in 2007, legal services providers say one amendment added by local drafters stands out.

A new paragraph in the proposed version encourages judges to make "reasonable accommodations" to help pro se parties understand proceedings and "be heard according to law." Examples include explaining court procedures, avoiding legal jargon and making referrals to resources. "Under the current code, a number of judges don't see the authority for doing that," Satterfield said. "We want to let judges know that in circumstances...that dictate a greater role, it's appropriate as long as you're maintaining the neutrality of your role."

Changing the code also wouldn't strain the court's already stretched budget, a constant consideration.

Herzog agrees that some judges are concerned that interacting with pro se litigants goes beyond their ethical scope. But a code that encourages judges to take a more active role would help, he said, because no matter how much aid clients get ahead of time, he's seen situations where "they get into court and now they're a deer in the headlights."

Still, Satterfield and legal services providers say the new code isn't a fix-all. When one side has an attorney and the other doesn't, it can often make the difference in a close case, he said, although he stressed that judges are bound not to give weight based on whether there's a lawyer involved.

Vilma Beverly, speaking after her hearing in the landlord and tenant branch, said that although she understood what was happening, she didn't think she could have avoided eviction proceedings on her own. All litigants should have access to an attorney "so that you can feel safe and secure," Beverly said. "I think everybody should have that right, and no one does."

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